

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RED EARTH LLC d/b/a
SENECA SMOKESHOP and
AARON J. PIERCE,

Plaintiffs,

TEMPORARY RESTRAINING ORDER

v.

10-CV-530A

UNITED STATES OF AMERICA and
ERIC H. HOLDER, JR., in his Official
Capacity as Attorney General of the
United States,

Defendant.

Plaintiffs have made application pursuant to Fed. R. Civ. P. 65 for a temporary restraining order and preliminary injunction against the defendants, enjoining and restraining defendants from enforcing the Prevent All Cigarette Trafficking Act ("PACT Act") of 2009. Pub. L. No. 111-154, 124 Stat. 1087, during the pendency of this action.

Upon plaintiffs' motion for a temporary restraining order, and upon the Complaint filed in this action, the supporting affirmation of Lisa A. Coppola, Esq., dated June 25, 2010 with exhibits, the supporting affidavit of Aaron J. Pierce, sworn to on June 25, 2010 with exhibits, and the Memorandum of Law dated June 25, 2010, and the defendants having failed to file a timely response to the motion as ordered by this Court on June 25, 2010; and upon hearing argument on June 28, 2010, the Court finds: (1) that plaintiffs have demonstrated that they will suffer irreparable injury absent injunctive

relief; (2) that, at this juncture, plaintiffs have demonstrated a likelihood of success on the merits of their claim that the PACT Act violates various provisions of the United States Constitution, including the Commerce Clause, the Tenth Amendment, the Due Process Clause, the Equal Protection Clause and principles of federalism and have demonstrated that the balance of hardships tips decidedly in their favor; and (3) that a temporary restraining order restraining the enforcement of the PACT Act pending a further hearing on these complex constitutional issues is in the public interest because the public interest favors restraining enforcement of statutes that appear to violate provisions of the Constitution. Accordingly, it hereby is

ORDERED that pending the earlier of a determination upon plaintiffs' motion for a preliminary injunction, or the expiration of 14 days from the date of this Order (unless otherwise extended an additional 14 days under Fed. R. Civ. P. 65), defendants are hereby restrained from enforcing the Prevent All Cigarette Trafficking Act of 2009, Pub. L. No. 111-154 as against plaintiffs Red Earth LLC d/b/a/ Seneca Smokeshop and Aaron J. Pierce; and further

ORDERED, that defendants shall file a response by **noon on Friday, July 2, 2010**; and further

ORDERED, that plaintiffs shall file a reply by **noon on Tuesday, July 6, 2010**;

ORDERED that the parties shall appear for a hearing on the preliminary injunction in this Court on **July 7, 2010, at 10:00 a.m.**

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: June 28, 2010